IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 1ST SEPTEMBER 2006 / 10TH BHADRA 1928

OP.No. 36810 of 2002(F)

PETITIONER:

M.THANGAL KUNJU, VELIYIL HOUSE,
PUTHUPPALLY VILLAGE, PUTHUPPALLY P.O.,
KAYAMKULAM, ALLEPPEY DISTRICT.(*)

MRS.THANGAL KUNJU, VELIYIL HOUSE,
PUTHUPPALLY VILLAGE, PUTHUPPALLY P.O.,
KAYAMKULAM, ALLEPPEY DIST.

(*) (PETITIONER DIED AND HIS WIFE IS SUBSTITUTED VIDE JUDGMENT.)

BY ADV. SRI.S.ABDUL SALAM

RESPONDENTS:
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1. THE DISTRICT EXECUTIVE OFFICER,
KERALA MOTOR TRANSPORT WORKERS WELFARE FUND BOARD,
ALLEPPEY.

2. THE STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT, LABOUR & REHABILITATION (S) DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

3. THE TAHSILDAR (REVENUE RECOVERY),
KARTHIKAPPALLY.

ADDL. RESPONDENT:

4. AYYAPPAN M.K., SHIBHU BHAVAN, KATTUKARA,
THIRUVALLA.P.O., ALLEPPEY DIST.

(ADDL. R4 IS IMPLEADED AS PER ORDER DT.1.9.2006 IN C.M.P. NO.3305/2003)

R1 BY ADV. SMT.I.SHEELADEVI, SC,KMTWF BOARD
R2&3 BY G.P. SRI.GEORGEKUTTY MATHEW

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ALONG WITH O.P. NO.11156/2002 ON 01/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NOS.62110/2002 & 3306/2003 IN O.P. NO.36810/2002

DISPOSED OF VIDE JUDGMENT:

1.9.2006 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE DETERMINATION ORDER DT.17.8.94 BY R1.

P2: TRUE COPY OF THE RELEVANT PAGE OF THE REPORT BY R1.

P3: TRUE COPY OF SERVICE AGREEMENT BETWEEN PETITIOENR AND ONE MR.UNNITHAN DT.24.4.92.

P4: TRUE COPY OF THE APPEAL FILED BY PETITIONER TO R2.

P5: TRUE COPY OF THE CONDONATION PETITION BY THE PETITIOENR TO R2.

P6: TRUE COPY OF THE MEDICAL CERTIFICATE DT.29.8.2002 ISSUED BY THE DOCTOR TO THE PETITIONER.

P7: TRUE COPY OF RELEVANT PAGE OF THE SALE AGREEMENT BETWEEN THE PETITIONER AND MR.AYYAPPAN.

P8: TRUE COPY OF R.R. NOTICE ISSUED BY R3 TO THE PETITIONER.

P9: TRUE COPY OF JUDGMENT IN O.P. NO.25762/2002 OF THE HIGH COURT OF KERALA DT.11.9.2002.

P10: TRUE COPY OF THE JUDGMENT H.C. KERLA IN O.P. NO.33181/2002 DT.11.11.2002.

P11: TRUE COPY OF THE ORDER DT.12.11.2002 TVM.

P12: TRUEC OPY OF THE BANK GUARANTEE IN FAVOUR OF TAHSILDAR VALUE RS.53,330/-.

P13: TRUE COPY OF THE PERMIT IN RESPECT OF STAGE CARRIAGE BUS NO.KRA-8460.

EXTS. IN I.A.14052/2004:

P13: TRUE COPY OF MEDICAL CERTIFICATE ISSUED BY THE PHYSICIAN A.M.HOSPITAL.

P14: TRUE COPY OF THE MEDICAL REPORT OF THE KERALA INSTITUTE OF MEDICAL SCIENCE ISSUED TO THE PETITIONER.

TRUE COPY

P.S. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. Nos.36810 & 11156 of 2002

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Dated this the 1st day of September, 2006.

JUDGMENT

Counsel for the petitioner stated that petitioner is no more and his wife survives. Therefore, Mrs.Thangal Kunju is substituted in the place of the petitioner and the O.Ps. are heard and disposed of.

2. The connected cases are filed challenging recovery proceedings for recovery of arrears of Motor Transport Workers Welfare Fund dues. In O.P. 11156/2002 the demand raised was confirmed in Ext.P5 order in appeal. The petitioner has produced Ext.P2 proceedings in that O.P. whereunder the District Executive Officer has himself considered that employees by name Sheraf, Rasheed, Sherif and Unnikrishnan have left the service of the petitioner. However, for 1989-90 it is seen that demand is raised for the said Sheraff and Mohammed Sherif also. Obviously if they had not joined in the next year after getting released, demand could not be raised for them. However, there is no finding that those persons were again reinducted. So far as the other three years are concerned where the demand under challenge is for the years 1990-91 to 1992-93, it is seen that the demand is raised for the same persons namely, Bhargavan, Sreenivasan, Raghavan Unnithan and Sherif and one Mohammed Sherif. It is not known whether the said Mohammed Sherif is the person who is alleged to have left the services in 1989 vide Ext.P2 in the O.P. In any case even if released

employees are employed in the subsequent year, contribution can be recovered for them. Similarly, contribution has to be demanded for substituted employees and reemployed persons who are registered workers. It is clear from the adjudication orders produced in both the O.Ps. that Bhargavan, Sreenivasan and Raghavan Unnithan were employees with the petitioner on a regular basis. Therefore, the demand in favour of these persons have to be only confirmed. However, since petitioner has a case of sale of vehicle to another person who is later impleaded in the O.P., I feel demand should be confined to the period upto actual date of sale which is a matter for verification for the Executive Officer. The O.Ps. are therefore disposed of with direction to the Executive Officer to recheck the orders once again with reference to the proof of date of sale to be furnished by the petitioner based on documents from the Motor Vehicle Department such as transfer of registration and transfer of permit which the petitioner will produce before the Executive Officer. In other words, demand should be limited for the actual employees and for the period of operation by the petitioner. If petitioner does not produce documents along with copy of this judgment within six weeks from date of receipt of copy of this judgment, the demand raised will stand confirmed. Interim orders of stay granted by this court will remain in force for four months from today and thereafter recovery will be made from defaulter's

property under modified demand issued by the Executive Officer. The Executive Officer will summon the purchaser also for giving details about the actual date of transfer of vehicle.

C.N.RAMACHANDRAN NAIR
Judge

pms